APPEAL NO. 010554

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 26, 2001. The hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained a compensable repetitive trauma injury while in the course and scope of her employment and that she knew or should have known that her injury was related to her employment on _____. The hearing officer also determined that the claimant timely notified her employer pursuant to Section 409.001 of the 1989 Act. The appellant (carrier) appeals, urging that the hearing officer's decision and order be reversed and rendered that the claimant did not sustain a compensable repetitive trauma injury, and additionally, or in the alternative, that the claimant failed to timely notify her employer of her injury pursuant to Section 409.001 of the 1989 Act; and, therefore, the carrier is relieved of liability under Section 409.002 of the 1989 Act. The claimant did not file a response.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable repetitive trauma injury and knew or should have known it was work-related on _____. The claimant worked in demonstrations and promotions for a bakery in a large retail chain, with which she had been employed for approximately seven years. She testified that, while her left shoulder pain at issue probably began in _____, she did not connect her symptoms with her job until mid-_____, after her employer had a bakery promotion called "muffin mania," during which the claimant had to complete more repetitive tasks than she usually performed. The carrier introduced evidence, via the claimant's medical records, that she initially reported her date of injury as _____. In addition, the carrier adduced testimony from the claimant that the holiday promotions, from before Thanksgiving until after Christmas, required more work and caused her greater exhaustion than did the "muffin mania" promotion.

The hearing officer did not err in deciding that the claimant timely notified her employer pursuant to Section 409.001 of the 1989 Act. As stated above, the hearing officer found that the date the claimant knew or should have known of her repetitive trauma injury was _____. The parties introduced evidence that the claimant reported her injury in writing on February 16, 2000, within 30 days of the date of the injury as found by the hearing officer.

The parties presented conflicting evidence on the disputed issues. Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d

701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disrupt the contested findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find them so here.

For these reasons, we affirm the hearing officer's decision and order.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge